

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

<b>IN RE:</b>	§	<b>CASE NO. 17-10284-tmd</b>
	§	
<b>ADAM DWAYNE FONTENOT,</b>	§	
	§	
	§	
<b>DEBTOR</b>	§	<b>CHAPTER 13</b>

**DEBTOR'S MOTION TO MODIFY CONFIRMED PLAN  
AND FIRST REQUEST FOR ADDITIONAL ATTORNEY'S FEES**

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO  
YOUR INTERESTS.**

**IF NO TIMELY RESPONSE IS FILED WITHIN 21 DAYS FROM THE  
DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE  
GRANTED WITHOUT A HEARING BEING HELD.**

**A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO  
BE HELD.**

TO THE HONORABLE TONY DAVIS, UNITED STATES BANKRUPTCY JUDGE:

NOW COMES the Chapter 13 Debtor by and through her attorney files this *Motion to Modify Confirmed Plan and First Request for Additional Attorney's Fees*, and in support thereof would show the Court as follows:

1. The Debtor filed a voluntary petition for relief under Chapter 13 on March 9, 2017. The Chapter 13 Plan was confirmed on June 15, 2017. According to the Trustee's Recommendation Concerning Claims entered September 11, 2017, the Confirmed Plan provides for a distribution to unsecured creditors equal to 0% of their claims. The Trustee is currently disbursing ongoing mortgage payments.

2. The current confirmed plan calls for monthly payments of \$2,620.00 in a 60-month plan. The base amount of the plan is currently \$157,500.00.

3. The Debtor's first plan payment was due on April 9, 2017. The plan is therefore currently in month 9. The last payment posted to Debtor's case was on November 7, 2017. The Debtor is current on the payments to the Trustee under the plan

4. Plan modification is necessary to make the following changes to the confirmed Plan:

Reduce a secured claim for Model Finance Company to an unsecured claim because Debtor was involved in an ATV accident with the collateral claimed by creditor Model Finance Company in which the vehicle was declared a total loss. The insurance proceeds (based on the valuation of the vehicle by an insurance adjuster) for the damaged vehicle is insufficient to pay the full balance of the claim of Model Finance Company. Model Finance Company received the insurance settlement proceeds as loss payee.

It is proposed that the secured creditor payments to Model Finance Company cease upon entry of the order modifying the plan and that the claim of Model Finance Company be reduced to an unsecured claim for the deficiency balance of the collateral, after receiving the insurance payment and payments according to this plan prior to the date of this motion.

**The claim of Model Finance Company is negatively affected by the request in this motion.**

Modification of the plan is also necessary because it appears that the current confirmed plan may be infeasible based on claims filed. The mortgage creditor, Planet Home Lending, LLC, filed a proof of claim with a higher than expected regular monthly mortgage payment. Debtor's taxes and insurance are escrowed with the mortgage creditor and it appears that an

escrow shortage exists with the upcoming tax and insurance payments. It is not anticipated that the Debtor's escrow payment will be as high following the next escrow analysis. Debtor has also drastically reduced his mortgage insurance as he discovered he was being charged over double the actual market rate.

5. The Debtor's current budget will allow a monthly payment of \$3,180.00 per month which will be sufficient to pay the debts remaining within the 51 months remaining of a 60-month plan to pay all of the secured and priority debts in-full with a distribution to unsecured creditors equal to 100% of their claims. The modified base amount will be \$182,350.00, which was derived by adding the total paid in months 1-9 (to date, November 2017) in the amount of \$18,960, plus \$163,490 which represents the modified payment of \$3,180.00 x 51 months. Modified payment is proposed to begin in December 2017.

6. Unsecured creditors WILL NOT be adversely affected by this modification.

7. The Debtor has filed an Amended Schedule I and J contemporaneously with this motion which demonstrates that the Debtor is providing all current and anticipated disposable income to the plan and that the Debtor has the ability to continue the case as proposed.

8. The Debtor has incurred attorney's fees in the amount of \$650.00 for filing this *Motion to Modify*, and requests that these fees be paid through the plan at the rate of \$200.00 per month. The attorney fees are not included in the modified plan base.

This is the first request for additional attorney's fees. The original benchmark fee of \$3,600.00 was granted to the undersigned attorney at Confirmation and \$2,600.00 is being paid through Debtor's plan to attorney.

Wherefore, Debtor asks that the Court enter an Order Modifying Debtor's Confirmed Chapter 13 Plan and approve the additional attorney's fees and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Jason Gallini

**S. Jason Gallini**

TSBN: 24044887

Gallini Law, PLLC

1000 Heritage Center Circle

Round Rock, Texas 78680

jasongallini@gallinilaw.com

(512) 238-8883

(512) 276-6742 Facsimile

*Attorney for Debtor*